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Office Memorandum • UNITED STATES GOVERNMENT

TO : General Counsel **OGC HAS REVIEWED.**

DATE: 12 JAN 1953

FROM : Personnel Director

SUBJECT: Salary Adjustments from Retroactive Pay Increases

REFERENCES: P.L. 201, 82nd Congress, 1st Session, dated October 24, 1951
P.L. 375, 82nd Congress, 2nd Session, dated June 5, 1952
Comptroller General (B-106337), dated November 6, 1951

1. This office desires an opinion whether the requirement for salary adjustments as prescribed in Comptroller General Decision (B-106337) is obligatory on the CIA. Presumably, the Decision is applicable to the Agency unless its specific terms of application are not binding.

2. Salary increases were accorded CIA personnel by administrative decision. The authority for making retroactive payments to Agency personnel for the period between the effective date of P.L. 201 and the date on which salary increases were made effective in the Agency was subsequently obtained from Congress (P.L. 375) and the back sums were paid. P.L. 375 apparently does not mandate that retroactive payments be made on the basis as those provided to classified employees under P.L. 201. The law states that pay increases may be made retroactively effective on the same basis as if they had been authorized by said law. Therefore, the provision might be construed to be permissive, not obligatory, on the Agency. It could be argued that the Comptroller General Decision (B-106337) has applicability to the CIA only to the extent that its restrictive effects were accepted as policy by this Agency.

3. The Decision of the Comptroller General is in accordance with the requirements of Sec. 802(b) of the Classification Act of 1949, and the CSC Regulation (Sec. 25 104(a)). The Act and Regulation provide that any person who is promoted or transferred to a position in a higher grade shall receive basic compensation at the lowest rate of such higher grade which exceeds his existing rate by not less than one step increase of the grade from which he is promoted or transferred. It is recognized, however, that the policy of the CIA to adhere to the Classification Act insofar as possible is a voluntary policy subject to such adherence or non-conformance as the Director of Central Intelligence may deem necessary and appropriate. Moreover, Agency promotion policy is administratively determined and is not bound by the requirement of Sec. 802(b) of the Classification Act of 1949.

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4. The applicability of de facto cases may deserve consideration relative to CIA personnel. The Comptroller General in a Decision dated January 25, 1952 (B-101721) asserted, "It is well settled that a person discharging the duties of an office under color of authority is entitled to retain the pay received by him in good faith as an officer de facto. U. S. vs. Royer, 268 U. S. 394. Following that decision this Office has regarded the right of a person to retain the pay of an officer de facto as conditional upon his good faith in discharging the duties of the office". Unlike those personnel retroactively paid under the provisions of P.L. 201, employees of the CIA were not granted retroactive payments for approximately nine months after the initial pay increase. This circumstance lends credence to the good faith in which the individuals held the positions to which they were promoted. In a Decision dated March 14, 1949 (B-82805), the Comptroller General said, in regard to a promotion action later determined to be in error by Civil Service Commission audit, that where there is an unauthorized personnel action and there is no evidence of bad faith or fraud either on the part of the employee or the administrative officials involved, the employee may be permitted to retain compensation received by him prior to the time such error was brought to the attention of the administrative officers. The Decision took cognizance of the necessary delay between the date of the personnel action and the time of audit.

5. An opinion is requested whether it is necessary to require repayment of amounts considered as over-payments under the terms of the Comptroller General Decision (B-106337), and, additionally, whether the repayment can be waived without the necessity for obtaining the opinion of the Comptroller General or revising CIA policy pertaining to the group of personnel affected.

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GEORGE E. MELOON
Personnel Director

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